UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,266	12/05/2000	Chris Boardman	A33437 (065855.0122)	7871

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EXAMINER
HECK, MICHAEL C

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/730,266	BOARDMAN, CHRIS
	Examiner	Art Unit
	Michael C. Heck	3623

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _22 February 2005_.

2a)☒ This action is **FINAL**.　　　2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-18_ is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-18_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _11 February 2005_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   This Final Office Action is responsive to applicant's amendment filed 11 February

2005. Applicant amended claims 1-11. Currently, claims 1-18 are pending.

Response to Amendment

2.   The objection to the Drawings in the First Office Action is withdrawn in response

to the applicant's amendment to the Specification and new Drawings.

3.   The objection to the Specification in the First Office Action is withdrawn in

response to the applicant's amendment to the Specification.

4.   The 35 U.S.C. 101 rejection in the first Office Action for claims 1-11 is withdrawn

in response to the applicant's amendment to the claims, however, the applicant

changed statutory class from a process to a machine. Please see the 35 U.S.C. 112,

second paragraph, rejection below.

Response to Arguments

5.   Applicant's arguments filed 11 February 2005 have been fully considered but

they are not persuasive. Applicant argues that Felthauser et al. (U.S. Patent 5,420,786)

and Berne (Berne, Supply Chain Savvy, Food Engineering, 1 August 1999 [GOOGLE])

neither alone nor combined teach or suggests estimating sales activity of a specialty

product. Applicant further argues that Felthauser et al. does not teach or suggest

defining a first product specific universe using wholesale purchasing data to determine a

product specific store size for a first plurality of retail outlets. The applicant asserts applying the Berne article does not cure the failures of Felthauser et al..

In response, the applicants defines the terms specialty product and specialty market as referring to products used by, or directed to, specialized consuming populations, or otherwise require special handling (such as refrigeration) which tend to render broad market assumptions unreliable (Specification, p. 7, lines 19-22). The Applicant further states that for pharmaceutical sales, the data provide for the pharmacies generally identifies the physician, or prescriber, who generates the script authorizing the sale (Specification, p. 8, lines 14-15). Felthauser et al. teach that sales activity of products prescribed by a physician at both the sampled and unsampled outlets can be estimated by correlating sales activity data for the prescribing physician at the sampled outlets according to the distance between the sampled outlets and the unsampled outlets. "Product prescribed by a physician" meet the definition of "specialty product" as identified in the specification since "Product prescribed by a physician" is product that is directed to a specialized consuming population.

As to product specific universe, the Examiner notes that Felthauser et al. do not refer to the exact term "product specific universe", however Felthauser et al. teach sales outlets where the outlets may be pharmacies or other types of retail stores or distribution establishments all of which distribute a particular product. The Examiner noted that Berne teaches a supply chain from manufacturer to customer to include wholesale distribution. The "sales forecast" and customer requirements strongly suggest purchasing data of wholesalers since wholesalers will purchase product from

the manufacturer or supplier (i.e., Kraft, Russell Stover Candies, Liberty Richter) based on their demand within the supply chain. In other words, the sales forecast and purchasing plan for this application are equivalent since the only difference is associated with the source of the information, that is, the customer or supplier. The "product specific universe" of the applicant is a population identifier as to where the data is coming from, i.e., where in the supply chain flow, such as sales outlets or upstream/downstream links, from raw materials through distribution as used in Felthauser et al. and Berne, and does not render a patentably distinct feature as used by the applicant.

Please see the 35 U.S.C. 103 (a) rejections below.

Claim Rejections - 35 USC § 112

6.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7.   **Claims 1-11** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant amended claims 1-11 to read "A computer programmed to perform a method for estimating the sales of specialty products...", however did not define the hardware required to define the computer, but only described the process employed by a programmed computer. If the applicant intended the invention to be a computer program, then the computer-readable medium needed to realize the computer program's functionality is missing. The Examiner notes the

applicant's response was to the 35 U.S.C. 101 technological art rejection of the first office action. As indicated in the first office action, mere recitation in the preamble (i.e., intended or field of use) or mere implications of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. Specifically, the identification of the individual steps performed by the computer is appropriate.

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9.   **Claims 1-18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Felthauser et al. (U.S. Patent 5, 420, 786) in view of Berne (Berne, Supply Chain Savvy, Food Engineering, 1 August 1999 [GOOGLE]). Please note that the examiner interprets store size per the applicant's specification as the volume of sales for the specific product of interest (p. 10, lines 6-7). The examiner also notes that the sales data regardless of source is still sales data. That is, for example, data regarding sales received from a wholesale operation versus a retail operation is still sales data or demand for a manufacturer. The customer is the difference. Therefore, the sum of the sources of sales data equates to the total sales data. Felthauser et al. discloses a

system and method for estimating product distribution using a product specific universe

comprising:

- **[Claim 1]** defining a first product specific universe using wholesale purchasing data to determine a product specific store size for a first plurality of retail outlets (col. 5, lines 50-61, Felthauser et al. teach sampled sales outlets and unsampled sales outlets in an area. The outlets may be pharmacies or other type of retail stores or distribution establishments all of which distribute a particular product. The examiner interprets pharmacies or other types of retail stores represent a group and distribution establishments represent another group, i.e., retail stores versus wholesale distributors.);

- defining a second product specific universe using sampled retail sales data to determine a product specific store size for a second plurality of retail outlets (col. 5, lines 50-61, Felthauser et al. teach sampled sales outlets and unsampled sales outlets in an area. The outlets may be pharmacies or other type of retail stores or distribution establishments all of which distribute a particular product. The examiner interprets pharmacies or other types of retail stores represent a group and distribution establishments represent another group, i.e., retail stores versus wholesale distributors.);

- applying geo-spatial projection to the first product specific universe and the second product specific universe to determine product specific projection factors for retail outlets in the first and second universe (col. 4, lines 17-51, Felthauser et al. teach sales of a particular product are sampled at a first group of the pharmacies and are sent to a central station having a main processor and a group of work station processors. In the main processor, data representing the distances between the first group of pharmacies and each other pharmacy are generated. A weighting factor for the sales of the particular product at each of the sampled pharmacies in a neighborhood of the other pharmacy is generated.); and

- applying said product specific projection factors to sampled retail sales data for the product to estimate the sales of said specialty product in unsampled outlets (col. 2, line 59 to col. 3, line 25, and col. 9, lines 23-43, Felthauser et al. teach nearest neighboring outlet activity sources within spatial proximity of each known but unsampled outlet are identified and the estimate of unsampled outlets is assembled by processing information on the discrete spatial correlation pattern among neighboring activity sources. The distance between the selected sampled sales outlets and the unsampled sales outlets are combined with parameter characteristics characterizing each sales outlet to form a signal representing an estimate of sales of the product at the unsampled sales outlet. The estimated sales of the particular product

is then generated for a range of unsampled stores according to the summation of the weighting factor of a sampled store times the sales volume for the same store.).

- **[Claim 7]** determining a product specific store size for a first plurality of retail outlets using wholesale sales data (col. 5, line 59 to col. 6, line 8, Felthauser et al. teach the outlets may be pharmacies or other type of retail stores or distribution establishments all of which distribute a particular product. Product sales data generated at each outlet is preferably transferred to the central station via a line. The examiner interprets pharmacies or other types of retail stores represent a group and distribution establishments represent another group, i.e., retail stores versus wholesale distributors.);

- determining a product specific store size for a second plurality of retail outlets using retail sales data, said retail sales data identifying a prescriber who authorized the sales (col. 3, lines 49-66, and col. 5, line 59 to col. 6, line 8, Felthauser et al. teach prescription sales for a prescribing physician in an area including sampled prescription sales outlets. The outlets may be pharmacies or other type of retail stores or distribution establishments all of which distribute a particular product. Product sales data generated at each outlet is preferably transferred to the central station via a line. The examiner interprets pharmacies or other types of retail stores represent a group and distribution establishments represent another group, i.e., retail stores versus wholesale distributors.);

- applying geo-spatial projection to the first plurality of retail outlets to determine product specific projection factors for the retail outlets for which sampled retail sales data is available (col. 4, lines 17-51, Felthauser et al. teach sales of a particular product are sampled at a first group of the pharmacies and are sent to a central station having a main processor and a group of work station processors. In the main processor, data representing the distances between the first group of pharmacies and each other pharmacy are generated. A weighting factor for the sales of the particular product at each of the sampled pharmacies in a neighborhood of the other pharmacy is generated.);

- applying geo-spatial projection to the second plurality of retail outlets to determine product specific projection factors for the retail outlets for which sampled retail sales data is available (col. 4, lines 17-51, Felthauser et al. teach sales of a particular product are sampled at a first group of the pharmacies and are sent to a central station having a main processor and a group of work station processors. In the main processor, data representing the distances between the first group of pharmacies and each other pharmacy are generated. A weighting factor for the sales of the particular

product at each of the sampled pharmacies in a neighborhood of the other pharmacy is generated.);

- applying said product specific projection factors to sampled retail sales data for the product to estimate the total prescriber activity in a region of interest (col. 4, line 52 to col. 5, line 17, Felthauser et al. teach sales of a prescription product of a prescribing physician are sampled at a first group of the pharmacies. The distance between the each of selected pharmacies and each other pharmacy is generated and a signal representative of the total sales of each pharmacy is stored. A weighting factor for each sampled pharmacy in a neighborhood of an unsampled pharmacy is generated. The sales volume of the prescription product for the prescribing physician is estimated using the prescription product sales volume for the physician at the pharmacy and the weighting factor.)

Felthauser et al. fail to teach using wholesale purchasing data. Berne teaches supply chain solutions streamlines operations and upstream/downstream links, from raw materials through distribution producing corporate-wide efficiencies. Over the past five years, Kraft has installed software for finance, human resources and resource development. The company is now implementing the Prism system to optimize their supply chain control. The manufacturing process begins with a sales forecast. The input produces a production model working backwards to include where products will be sold, where they need to be shipped and the source plant for these products. The result is a plant production schedule. The software allows Kraft's conversion plants to develop and run production models for specific products with the ability to update model assumptions on a real time basis. Russell Stover Candies, in order to respond to customer requirements, has pressured suppliers to supply material fast and with less lead-time than ever before. To achieve the level of agility and responsiveness, it is essential to have access to accurate, real-time information and greater visibility into the entire supply chain. The extends to the time an order comes in, to anticipate

delivery date, to when and how materials are coming in, to manufacturing constraints, and more since chocolate is a perishable product with a limited shelf like. Berne further teaches a Global Pipeline. Whether you are a food importer, manufacturer importing raw materials or exporting finished products, having a clear view into the global supply chain pipeline is vital. Liberty Richter, a specialty food importer representing more than 80 brands, supplies retail, foodservice and wholesale markets. The company faced two major problems with its operation; one was internal visibility into available inventory, both on-hand and in-transit that could be allocated to orders; and tracking actual cost of products to determine brand profitability (Para 1, 5, 9, 17, 19, and 42). In summary, Berne teaches a supply chain from manufacturer to customer to include wholesale distribution. The "sales forecast" and customer requirements strongly suggest purchasing data of wholesalers since wholesalers will purchase product from the manufacturer or supplier (i.e., Kraft, Russell Stover Candies, Liberty Richter) based on their demand within the supply chain. In other words, the sales forecast and purchasing plan for this application are equivalent since the only difference is associated with the source of the information, that is, the customer or supplier. Therefore, it would have been obvious to one of ordinary skill in the art to include wholesale purchasing data of Berne with the teachings of Felthauser et al. since Felthauser et al. teach estimating sales activity of a product (col. 2, lines 51-58). Delivering the right product to the customer when the customer wants it contributes greatly to customer satisfaction. Berne teaches that in order to achieve the level of agility and responsiveness we aspire to, it is essential that we have access

to accurate, real-time information and greater visibility into the entire supply chain

(Para 17). Therefore, having accurate information that allows the company to be

responsive to customer's demands ensures they are producing the right product at the

right time to deliver to the customer, which in turn ensures delivery of the right product

to the customer when the customer want it, therefore, contributing to customer

satisfaction.

- **[Claim 2]** said sampled retail sales data identifies an authorizing agent for said sales and wherein the estimated sales are attributable to said authorizing agent (Felthauser et al.: col. 4, lines 52-56, Felthauser et al. teach sales of a prescription product of a prescribing physician are sampled at a first group of the pharmacies).

- **[Claim 3]** the specialty products are pharmaceuticals and wherein the authorizing agent is a physician (Felthauser et al.: col. 4, lines 52-56, Felthauser et al. teach sales of a prescription product of a prescribing physician are sampled at a first group of the pharmacies).

- **[Claim 4 and 8]** the second product specific universe represents retail facilities not represented in the first product specific universe (Felthauser et al.: col. 5, lines 59-61, Felthauser et al. teach the outlets may be pharmacies or other type of retail stores or distribution establishments all of which distribute a particular product. The examiner interprets pharmacies or other types of retail stores representing a group and distribution establishments representing another group that is different than the other group).

- **[Claim 5 and 9]** the second product specific universe includes unsampled retail facilities (Felthauser et al.: col. 3, lines 1-5, Felthauser et al. teach the spatial correlation process between outlets is represented by the distribution pattern of each prescribers prescription activity among a local neighborhood of outlets (sample or unsampled).).

- **[Claim 6 and 10]** the unsampled retail outlets are assigned an average product specific store size based upon the sampled retail sales data (Felthauser et al.: col. 2, line 59 to col. 3, line 25, Felthauser et al. teach nearest neighboring outlet activity sources within spatial proximity of each known but unsampled outlet are identified and the estimate of unsampled outlets is assembled by processing information on the discrete spatial correlation pattern among neighboring activity sources. The distance

between the selected sampled sales outlets and the unsampled sales outlets are combined with parameter characteristics characterizing each sales outlet to form a signal representing an estimate of sales of the product at the unsampled sales outlet.).

- **[Claim 11]** the combination of the first plurality of stores and the second plurality of stores represents substantially all of the retail outlets for the specialty product (col. 5, line 59 to col. 6, line 8, and col. 9, lines 11-43, Felthauser et al. teach the outlets may be pharmacies or other type of retail stores or distribution establishments all of which distribute a particular product.).

Claims 12-18 substantially recites the same limitations as that of claims 1-6 and 11 with the distinction of the recited method being a system. Hence the same rejection for claims 1-6 and 11 as applied above applies to claims 12-18.

Conclusion

10.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

Examiner should be directed to Michael C. Heck whose telephone number is (571) 272-

6730. The Examiner can normally be reached Monday thru Friday between the hours

of 8:30am - 4:30pm. If attempts to reach the examiner by telephone are unsuccessful,

the examiner's supervisor, Tariq R. Hafiz can be reached on (571) 273-6729.

Any response to this action should be mailed to:

Director of the United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Or faxed to:

(703) 872-9306   [Official communications; including After Final
                            communications labeled "**Box AF**"]

(571) 273-6730   [Informal/Draft communication, labeled "**PROPOSED**" or
                            "**DRAFT**"]

mch
09 May 2005

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